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ABSTRACT

This booklet for trustees of institutions of higher education offers guidelines concerning the distinction between policy making and administration and the relationship of policy making to administration. It stresses the importance of keeping policy making and administration separate and of communication and consultation between the chief executive and the board. A difference between active and "activist" trustees is noted, with activist trustees described as lacking confidence in academic administrators and their fellow trustees. The booklet goes on to offer general guidelines concerning the following areas: (1) the escalating pressures on all boards, but public ones in particular, calling for stronger board leadership in policy setting; (2) practices trustees may employ to set policy successfully, even in the glare of media and political attention; (3) different approaches to policy setting for system boards as opposed to single-campus boards, and for private boards as opposed to public ones; and (4) options for monitoring and evaluating the effectiveness of policies and their implementation. Each section also lists some questions to consider. (DB)

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BOARD BASICS

THE FUNDAMENTALS

POLICY MAKING AND ADMINISTRATIVE OVERSIGHT

BY TERRENCE J. MACTAGGART

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ASSOCIATION OF GOVERNING BOARDS OF UNIVERSITIES AND COLLEGES

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Policy Making and Administrative Oversight

Virtually everyone in higher education wants policy making and administration to remain distinct, complementary responsibilities. But identifying where policy setting ends and administration begins can be difficult. Higher education leaders face increasingly complex challenges, and boards are experiencing mounting pressure to become more astute, active, and involved in a wide array of institutional affairs. Today's heated political climate often leaves little room for moderation.

In the simplest terms, policy setting is the responsibility of the board, and administration is the business of the chief executive, whether he or she is called president or chancellor. The nuances vary according to each institution's culture, precedent, and personalities. In general, policies are statements usually dealing with broad institutional issues that guide board and management action. Administration refers to specific management procedures and to the people who implement the policies.

Typical examples of areas in which boards set policies include mission, degree requirements, tuition, affirmative action, executive compensation, conflict of interest, personnel matters, investment and budget guidelines, and descriptions of how the board will manage its own affairs. Trustees are responsible for *developing* policy (often—and appropriately—at the initiative of administrators) and approving or adopting policies developed by administrators. Administrators are responsible for *implementing* policies, *evaluating* them periodically, and *reporting results* to the board for possible modification or refinement.

Board effectiveness depends on the ability of trustees to recognize and abide by these distinctions, regardless of the pressure to do otherwise. Trustees who attempt to set *and* administer policy will do a bad job of both. Sound policy setting requires information, intelligence, and experience. It also demands that the policy setter maintain some perspective—some distance from the action—to appraise facts and weigh options coolly. Trustees who attempt to manage the policies they help set jeopardize their ability to make dispassionate judgments. By clouding the differences between policy setting and policy implementation, they erode the institution's capacity to be well managed.

A high degree of communication and consultation between the chief executive and the board is essential. Each should agree to a "treaty of no surprises" in important matters. A wise president or chancellor will be wiser still if he or she seeks advice from and keeps the board chair updated on significant executive matters. A strong president also will recommend policy options and preferred courses of action to the board. But the president must remember that at the end of the day, it is the trustees who vote on policy matters, not the executive.

ACTIVE VERSUS "ACTIVIST" TRUSTEES. Some literature on the work of nonprofit boards and the behavior of a few overly zealous trustees have resulted in a blurring of distinctions between policy making and administration. Well-known higher education governance experts Barbara E. Taylor, Richard P. Chait, and Thomas P. Holland proposed in a 1996 *Harvard Business Review* article that the new challenges facing nonprofit boards require that "board and management both set policy and implement it. Lines are blurred, borders open. Domains are decided by the issue at hand." While the article offers some valuable insight for trustees seeking to be engaged actively in governance, the recommendation to deliberately obscure the line between setting policy and implementing it is proble-matic in a college or university setting.

Further, the appointment of so-called "activist" trustees to the boards of some public institutions and systems has added fuel to the debate regarding what constitutes sound board leadership. Inspired by a zeal to reform public institutions, today's activists pursue such specific agendas as eliminating minority and women's studies, repealing affirmative-action policies, and eliminating or curtailing remedial education. In the 1960s and 1970s, activist trustees supported precisely the opposite agenda.

A HIGH DEGREE OF COMMUNICATION AND CONSULTATION BETWEEN THE CHIEF EXECUTIVE AND THE BOARD IS ESSENTIAL.

Yet despite their disparate agendas, both kinds of activists are united in their lack of confidence in academic administrators and their fellow trustees. Activists, whatever their political leanings, display a penchant for taking matters into their own hands: Directly appointing senior staff, ensconcing themselves in administrative offices, and communicating with the media without board consent are only a few examples of highly questionable practices.

Such behavior invariably compromises the board's capacity to set sound policy over the long run, regardless of how passionately an individual trustee may feel about a specific issue or cause. It is far better and more effective to seek board consensus on a new policy first and then direct the administration to carry it out.

AGB President Richard T. Ingram examined the issue of trustee activism in a 1996 article in *Trusteeship* magazine. His words merit repeating:

"If trustee activism means a demonstrated commitment to advocacy of institutional needs and to accountability in serving the broad public trust, that is a good thing. If activism means the thoughtful and determined pursuit of needed reform—in partnership with the chief executive and other academic leaders whose cooperation in such an endeavor ultimately is essential—then that is a good thing, too. And if activism means the exercise of leadership through persuasion and reasoned argument, rather than through the use of coercion, raw power, or ultimatum, all well and good. Compromise and patience are virtues, as are strong convictions.

"On the other hand, the mark of responsible trusteeship is missed by a wide margin if activism means unrelenting criticism and distrust of institutional leaders, using the press to advance personal conclusions and agendas, serving as the instrument of the person most responsible for one's appointment, or pursuing strong stands on complex issues before all of the facts are in or before carefully weighing the views of other board members, the chief executive, and those most affected."

MOST BOARDS TUSSLE FROM TIME TO TIME WITH QUESTIONS OF WHAT IS POLICY, WHAT IS ADMINISTRATION, AND WHO IS RESPONSIBLE FOR EACH DOMAIN.

Different circumstances require different levels of trustee involvement, of course. Most boards tussle from time to time with questions of what is policy, what is administration, and who is responsible for each domain. For example, does the board have a role in evaluating senior university officers, or is this the prerogative solely of the chief executive? How detailed should a financial investment policy be? And one of the thorniest questions confronting boards: What is their role in evaluating academic programs?

The correct approach depends on trustee experience and expertise; previous board actions and decisions; the level of ambiguity an institution can tolerate; the degree of mutual trust and respect among the board, key administrators, and faculty; and many other factors. Clearly, a degree of trustee involvement that is acceptable for one institution may be intolerable for others. Consequently, no publication can prescribe definitive rules or procedures. Rather, this booklet features general guidelines concerning the following:

- the escalating pressures on all boards, but public ones in particular, calling for stronger board leadership in policy setting;
- practices trustees may employ to set policy successfully even in the glare of media and political attention;
- different approaches to policy setting for system boards as opposed to single-campus boards and for private boards as opposed to public ones;
- options for monitoring and evaluating the effectiveness of policies and their implementation.

A Challenging and Complex Environment. Trustees face an unprecedented combination of political, economic, and regulatory pressures. Certainly, trustees historically have faced their share of fiscal crises and conflict with political leaders and often the general public as well. But today's trustees face a unique combination of several interrelated challenges, including the following:

Fiscal uncertainty. A strong national economy in the late 1990s resulted in greater private giving to higher education and increased state appropriations to most public institutions. Because the national economic winds shift every few years, higher education leaders would be wise to watch various social, economic, and political indicators for signs of change.

Public frustration. Just as more Americans realize that at least two years of postsecondary education is a prerequisite to earning a livable income, they increasingly are concerned with the cost, availability, and management of higher education. Political leaders share this frustration. Many warn of greater intervention in the form of more regulations and greater accountability—and perhaps less funding—unless they are convinced boards are responsive to the public interest as well as to the demands of taxpayers and tuition-paying students and families.

Greater competition. Bureaucratic and geographic barriers to new educational providers are eroding as information technology creates new alternatives to delivering education and training. For-profit institutions—such as the University of Phoenix and an increasing number of other aggressive, market-oriented competitors—demonstrate that consumers will buy educational services packaged to meet their busy lives. With the exception of a few elite or specialized institutions, more colleges will be pressured to imitate or partner with these new competitors to maintain their share of the higher education market.

Increasing political and ideological intrusion. In the context of public higher education, it is the right of political leaders to appoint capable trustees to public boards, and it's no surprise that they often select capable friends, donors, and other individuals who share their political views. It is alarming, however, when these same political leaders directly intervene in the policy-making process to virtually dictate trustee positions on institutional issues. To chart the best course through these complex political and economic crosscurrents, trustees need astute appraisals of where they stand and where they ought to go.

But independent boards are not immune from such pressures. For example, independent institutions can experience a similar sense of "intrusiveness" from church leaders (in the case of religious-affiliated institutions), alumni organizations, major donors, and influential community or business leaders.

Questions to Consider

- Have board members formally discussed and analyzed the key economic and political forces in their state or region to get a realistic picture of the world in which they operate?
- Has the board formed a plan based on this environmental scan to enable trustees to anticipate and act on key policy issues before they become institutional, community, or political crises?
- Has the board developed a written code of trustee conduct that spells out acceptable and unacceptable behavior in the face of constituent or political pressure?

Policy Making in a Fishbowl. Heightened public expectations and media attention—plus the readiness of many internal and external constituents to jump into the fray of higher education—collide with need of boards to set policy in a cool and deliberative manner. In the recent past, "insider issues"—tenure, presidential compensation, or remedial education, for example—have migrated from the boardroom to the six-o'clock news.

Unless boards can assert their competence to set policy and guide the institution, negative consequences are sure to ensue. Three dominate the public higher education landscape: (1) Higher education policy making increasingly will occur in governors' offices and in legislatures; (2) legitimate policy differences will intensify and become politicized as they are paraded in the media; and (3) more governors and legislatures will appoint greater numbers of trustees with a strong ideological or partisan bent.

The following negative ramifications seem likely for private institutions: (1) External constituents—including the news media—will exert undue influence on an institution's mission and academic character; (2) internal constituents—including alumni—will become more involved in governance issues that once were the sole domain of boards (those dealing

with presidential leadership, for example); and (3) major donors increasingly will attach conditions to their gifts with implied (and expressed) threats to withhold donations if academic programs aren't modified according to their wishes or beliefs.

To maintain its leadership role in setting educational policy, a board first must develop sound strategies that support and advance the institution and ward off inappropriate constituent and political intrusion when possible. Subsequently, a board must manage the policy-setting process when institutional issues do become public or politicized.

UNLESS BOARDS CAN ASSERT THEIR COMPETENCE TO SET POLICY AND GUIDE THE INSTITUTION, NEGATIVE CONSEQUENCES ARE SURE TO ENSUE.

QUESTIONS TO CONSIDER

- Has the board formed a consensus on policy issues likely to attract the attention of interest groups?
- Has the board—especially its leadership—sought to discuss key policy questions with constituents or political leaders *before* such topics become public issues in order to demonstrate the seriousness and depth of deliberations and to avert conflict?
- In discussing controversial issues, has the board made every reasonable effort to include different points of view and to engage external and internal constituents, interested citizens, and organized groups when appropriate?
- For public institutions and systems, has the board chair or the institution's legal counsel briefed trustees on the applicability and requirements of the state's open-meeting law? (Some board members may feel the temptation and pressure to settle matters in private and need to know that doing so may be illegal. The news media will be alert to unauthorized board meetings and communications.)

TRUSTEES MUST BE CERTAIN THAT THE POLICY-SETTING PROCESS IS CONGRUENT WITH THE INSTITUTION'S CULTURE AND WITH THE POLICIES THEMSELVES.

- For both public and independent institutions, has the board identified a spokesperson (usually the board chair) who makes public statements on behalf of the board and responds to media inquiries?
- Does the board have a process for interacting with the media? Does this process include "background interviews" with reporters to inform them of the rationale underlying policy changes?
- When individual trustees act inappropriately, does the chair have the board's authority to reiterate diplomatically but firmly the board's position? Are board members prepared to support the chair in correcting an errant member?

MATCHING POLICY TO INSTITUTIONAL TYPE. There are vast differences in the size, missions, programs, budgets, and operations of colleges and universities. Add to these differences the distinctive political and social cultures of states and regions, and it becomes clear why trustee policy setting must be tailored to each situation. Because of this variety, trustees must be certain that the policy-setting process is congruent with the institution's culture and with the policies themselves.

Several significant differences exist between policy setting for public and private boards. Four of the most notable are institutional ownership, the presidential appointment processes, the degree of public regulation, and political involvement. For example, consider the following:

- Private institution boards typically "own" the colleges and universities they oversee. Their public counterparts govern enterprises that belong to citizens of their respective states.

- Private boards typically are self-perpetuating—they select their own members. Public boards are appointed by a governor with legislative confirmation or by the legislature alone. In a few states, they are elected directly by voters.

- As creations of government, public boards may be restructured, lose or gain specific powers and authority, or be eliminated if the legislature so decides. Even public boards granted constitutional independence are subject to change if the political will exists to alter the constitution.

- Although they are subject to public law, and the jurisdiction of coordinating boards or other authorities, private boards are relatively free of the high degree of state regulation that covers the publics.

- Private institutions are subject to political pressure to the extent they or their students receive support from public coffers. Because the governor and legislators wield the power of the purse, they hold some clout over public institutions.

Most public colleges and universities in the United States are governed by a system board. These system boards may govern all the public institutions in a state, just the two-year colleges or just the four-year institutions, a set of colleges or universities clustered around the state's land-grant university, or other combinations. About one dozen states operate with boards that govern a single institution rather than a system of institutions. (Most of these have a coordinating agency or board.) Readers interested in the policy responsibilities of trustees governing a single public institution should consult Richard T. Ingram's "Trustee Responsibilities: A Guide for Governing Boards of Public Institutions" in this series.

D. Bruce Johnstone, in *Public Multicampus College and University Systems*, succinctly identifies the core functions of system boards:

- develop the missions of the system as a whole and of the constituent campuses;

- appoint and evaluate campus chief executives and dismiss them, if necessary;

- act as an advocate to the member campuses on behalf of the public and to the governor, legislature, and other leaders on behalf of higher education;

- allocate resources and services among campuses or recommend their allocation;
- act as a buffer and as a liaison between political interests and institutions;
- referee disputes and foster collaboration among campuses;
- oversee the use of financial assets and other resources; and
- coordinate such common services as legal counsel, telecommunications, financial audits, and institutional research.

In addition, system boards must demonstrate leadership in defining their state's public higher education agenda and direct the system's resources to achieving those public goals.

Questions to Consider

- Do trustees consciously and regularly consider how their policies and processes match the kinds of institutions they oversee?
- Have trustees helped new members understand their unique responsibilities and challenges? (This is especially important for trustees who previously served a different kind of institution—a private institution trustee who's been appointed to a public board, for example.)

Questions for Trustees of Public Systems

- Do trustees ensure their policies recognize and foster legitimate differences among institutions, rather than insist on a "one size fits all" philosophy?
- In setting policies, are the perspectives of different campuses and regions of the state recognized in the deliberative process?
- In gathering information to support policy decisions, do trustees visit different regions of the state and hold meetings at the constituent campuses?

EFFECTIVE BOARDS SYSTEMATICALLY MONITOR HOW NEW POLICIES WORK AND PERIODICALLY REVIEW THE POLICY-SETTING PROCESS AND THE EXISTING POLICY INVENTORY.

- In measuring and evaluating the results of policy decisions, do trustees ensure that expectations match differing institutional missions and student profiles?
- Has the board developed a philosophy or rationale that captures the larger purpose of the institution or system? (The "Wisconsin Idea" and Maine's "Entrepreneurial Universities, Efficient Systems" are slogans that attempt to summarize some systemwide strategies and spirit.)
- Are trustees willing to assert their authority on policy questions that have state-level importance? Do they insist campus leaders support this agenda?

MONITORING AND EVALUATING THE POLICY PROCESS. Highly effective boards not only systematically monitor the effects of new policies, but they also periodically review the entire process of setting policy and the existing policy inventory. A useful template for such a process might include these five steps:

Discuss the need. Not every situation demands a new policy. The board should consider whether a simple statement or decision by the board, an administrative regulation, or some alternative action might suit a specific situation better than a general rule or policy statement.

Gather information. If establishing a new policy seems in order, the board should acquire background information, gather examples of how trustees in other institutions have responded to similar situations, seek the advice of experts (including legal counsel, if appropriate), and request a recommendation from the administration. This analytical work should include a review of the educational, financial, and political consequences of the proposed action.

Seek public comment. Most policy discussions deserve a well-publicized opportunity for constituent and public comment, especially by those likely to be most affected. The process also should allow for a reasonable—but fixed—period of time to pass before the board formally enacts changes.

Communicate the new policy clearly. Once the vote is taken, the message needs to be faithfully recorded in the minutes, placed in board policy manuals, and communicated to interested parties.

Evaluate. Trustees should make sure this "concluding" step is taken into account when adopting a new policy. Doing so will enable institutional leaders to gather the necessary information so the review will occur.

NOT EVERY SITUATION DEMANDS A NEW POLICY. A SIMPLE STATEMENT OR ADMINISTRATIVE REGULATION MIGHT BE MORE APPROPRIATE IN SOME CASES.

Over time, the board's policy manual or inventory of policy statements is apt to become unwieldy, out of date, contradictory, and possibly embarrassing. Every two years or so, the board and administration should review the inventory of policies to assess need, consistency, clarity, relevance, and to determine if long-standing policies reflect current board thinking.

In addition, trustees should insist on an information stream that will enable them to modify a policy in the short run if circumstances dictate and either drop or confirm the policy for the long run, depending on the results of a soundly conducted evaluation.

Questions to Consider

- Does the board periodically reconsider its policy-setting process to ensure it is open, analytical, and includes an evaluation component?
- Does the board schedule a formal review of the existing inventory of policies to determine if they are clear, consistent with one another, relevant, and reflect current board thinking?
- Are policies subject to rigorous evaluation to determine if they fulfill board expectations and to ensure they do not lead to negative or unintended consequences? (This evaluation is especially important for new or untested policies, as well as for long-existing policies that may be in doubt.)

Conclusion. The public expects colleges and universities to perform well. Yet with more competition, financial uncertainty, and greater willingness for constituents and political leaders to intervene, policy setting has become more complicated than in the past. Precisely because of this combination of pressures, boards must become more systematic, inclusive, and courageous in setting the general rules that govern the institutions and systems they oversee.

Resources

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This publication is part of **Board Basics**, an AGB series devoted to strengthening the effectiveness of governing boards and trustees. Board Basics comprises several topic clusters—The Fundamentals, Financial Matters, Fund-Raising, Academic Affairs, Leadership, Strategic Decision Making, Foundation Relations, and Effective Committees—each of which contains several booklets. Several assumptions underlie the series:

- Academic trusteeship grows increasingly ambiguous, and board members need concise, accessible, and focused information to help them carry out their complex fiduciary and stewardship responsibilities.
- Basic principles of trusteeship remain constant across higher education, regardless of institutional type, size, and mission. The series highlights these general principles to provide board members with a core of knowledge they can apply to their individual situations.
- The series addresses the distinguishing characteristics of academic trusteeship, especially as it differs in scope, substance, and focus from corporate directorships and other board service.

AGB and the authors welcome comments and suggestions to improve this publication and others in the series. Call AGB publications at 800/356-6317 or visit our Web site at www.agb.org for more information.

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